

United States District Court
For the Northern District of California

1
2
3
4
5
6 In Re: Facebook Privacy Litigation

7 NO. C 10-02389-JW
8 NO. C 10-05301-BZ

9 Wendy Marfeo,

10 Plaintiff,

11 v.

12 Facebook, Inc.,

13 Defendant.

14 / **ORDER GRANTING MOTION TO**
15 **RELATE CASES; CONSOLIDATING**
16 **CASES**

17 Presently before the Court is Defendant Facebook, Inc.’s (“Facebook”) Motion to Consider
18 Whether Cases Should be Related.¹ Facebook seeks the Court’s determination as to whether Marfeo
19 v. Facebook, Inc., Case No. CV 10-05301-BZ should be related to In Re: Facebook Privacy
20 Litigation, Case No. CV 10-02389-JW. Facebook contends that these cases arise from substantially
21 similar factual allegations that Facebook’s “referrer headers” caused user information to be leaked to
22 third parties, involve overlapping legal claims and involve overlapping parties on both sides of the
23 litigation. (Motion at 3-5.)

24 **A. Motion to Relate**

25 Civil Local Rule 3-12(a) provides:

26 An action is related to another action when:

27 _____
28 ¹ (See Defendant Facebook, Inc.’s Administrative Motion to Consider Whether Cases
Should be Related, hereafter, “Motion,” CV 10-02389-JW, Docket Item No. 66.)

- 1 (1) The action concerns substantially the same parties, property, transaction or event; and
 2 (2) It appears likely that there will be an unduly burdensome duplication of labor and
 expense or conflicting results if the cases are conducted before different judges.

3 Here, the Court finds that these cases involve substantially the same parties: Defendant
 4 Facebook, and overlapping classes. The Court also finds that these cases involve substantially the
 5 same transactions and events.² Plaintiffs in all cases allege that, via “referrer headers,” Facebook
 6 disclosed unique Facebook user identification numbers (“UID”), allowing third parties to obtain
 7 private information about users and their activities online. All cases involve overlapping causes of
 8 action and factual inquiries. The Court also finds that the two actions pose a substantial risk of
 9 inconsistent judgments. In light of the substantial similarity of parties, events and causes of action,
 10 the Court finds that there is a risk of “an unduly burdensome duplication of labor and expense or
 11 conflicting results if the cases are conducted before different judges.” Thus, the Court finds that the
 12 cases are related within the meaning of Rule 3-12(a).

13 Accordingly, the Clerk of Court shall immediately relate Marfeo v. Facebook, Inc., Case No.
 14 CV 10-05301-BZ to In Re: Facebook Privacy Litigation, Case No. CV 10-02389-JW.

15 **B. Consolidate**

16 Further, the Court *sua sponte* considers whether these related cases should be consolidated.
 17 A district court has broad discretion to consolidate actions involving “common issues of law
 18 or fact.” Fed. R. Civ. P. 42(a); Investors Research Co. v. U.S. Dist. Ct. for Cent. Dist. of Cal., 877
 19 F.2d 777, 777 (9th Cir. 1989). In exercising its broad discretion to order consolidation, a district
 20 court “weighs the saving of time and effort consolidation would produce against any inconvenience,
 21 delay, or expense that it would cause.” Huene v. U.S., 743 F.2d 703, 704 (9th Cir. 1984).

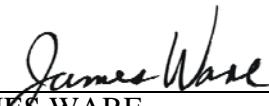
22 Upon review of the Complaints in both Actions, the Court finds that each case presents
 23 virtually identical factual and legal issues. Plaintiffs in each Action allege that Defendant’s shared
 24 Plaintiffs’ information with third-party advertisers via “referrer headers” without Plaintiffs’
 25 knowledge or authorization, and in violation of Defendant’s own privacy policies. The Actions are

26 ² (Compare Class Action Complaint, CV 10-05301-BZ, Docket Item No. 1 with
 27 Consolidated Class Action Complaint, CV 10-02389-JW, Docket Item No. 36.)

1 also at similarly early stages of litigation, as Facebook is yet to file an Answer in either of the related
2 Actions. Further, as each case involves the same alleged activity by Facebook, discovery issues will
3 be substantially duplicative. Given these similarities and the lack of any apparent inconvenience,
4 delay or expense that would result from consolidating the cases, the Court finds that consolidation of
5 the Actions is appropriate.

6 The Court consolidates these Actions—CV 10-02389 and CV 10-05301—into one action. The
7 Clerk of Court shall consolidate these actions such that the earliest filed action, CV 10-02389, is the
8 lead case. All future filings shall be in CV 10-02389 and bear the caption: “In re Facebook Privacy
9 Litigation.” Since the later action is now consumed in first filed action, the Clerk shall
10 administratively close CV 10-05301. All future related cases shall be automatically consolidated
11 and administratively closed.

12
13 Dated: December 21, 2010
14


JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Andrew N. Friedman afriedman@cohenmilstein.com
Daniel A. Small dsmall@cohenmilstein.com
3 David Knothe Stein ds@girardgibbs.com
Dylan Hughes dsh@girardgibbs.com
4 Eric H. Gibbs ehg@girardgibbs.com
Philip Scott Friedman psf@consumerlawhelp.com
5 Stefanie M. Ramirez sramirez@cohenmilstein.com

6 **Dated: December 21, 2010**

Richard W. Wieking, Clerk

7
8 By: /s/ JW Chambers
9 Elizabeth Garcia
Courtroom Deputy